

Some Observations on the Attached
Undated Draft Executive Order

Preamble: Fails to state any premise or otherwise to distinguish "sensitive" positions from "non-sensitive." This failure appears throughout the draft, most notably in Section 5.

Section 2: Makes no reference to guidelines for adjudications.

Section 3: This section repeats the error of E.O. 10450 in extending P.L. 733 to all agencies, at least those completely non-sensitive.

This Section also appears to exempt CIA and other member agencies of the intelligence community, a rather peculiar approach considering that the primary purpose of the order is (or should be) to deal with sensitive positions.

Section 4: By stating a single standard for all positions, even though recognizing "the nature of the position" as a factor to be considered, this Section continues the basic error of failing to distinguish the fundamental qualitative differences between sensitive and non-sensitive positions.

The standard, "advisable", is hopelessly vague and can only lead to considerable problems.

Section 5: Continues the error of E.O. 10450, especially sub-sections (3), (5), and parts of (6), (7), and (8), which have nothing to do with national security.

This Section also fails to meet one of the major problems of the current program, i.e., the uneven and excessive designations of sensitive positions.

Section 6: Is weak in many respects. For example, it specifies investigative coverage for non-sensitive positions but leaves it to CSC to define later the coverage of a "full field investigation" concerning sensitive positions.

Sub-section (b): By failing to track the language of Section 8(c) of E.O. 10450, the draft appears to require CSC authority for agency investigations of persons entering Federal employment in other than the competitive service.

Sections 7 and 8: Beg the question. Two of the most pressing needs in the current program are detailed due process safeguards and detailed standards and procedures for adjudication.

These sections also miss the opportunity for the President to establish alternative corrective actions in cases of security problems; it is still "fire or leave in place", whereas intermediate procedures could also be effective.

Section 10: Gives CSC and Justice a blank check to do what, for the most part, has already been done in the previous draft, which, but for a few differences, has come close to acceptance by both the sensitive and the non-sensitive agencies.

Other comments: Any order of this complexity should include definitions of the most significant terms, if only as an attachment.

By failing to cite types of sources to be checked in personnel investigations, notably police records, the draft may not satisfy state and local regulations authorizing access to criminal justice data.

The draft is weak or completely silent on due process and "privacy" considerations, factors which ought to be included in any Presidential document of this character. Similarly, there is no reference to the value of accepting prior investigative results, a matter which would seem to suit the President's philosophy.

The draft completely ignores any standards and procedures for adjudication. Since the previous draft contained much specific detail in this regard, it can only be assumed that the authors of the present draft fear an inability to achieve agreement. If so, giving the CSC a blank check to define the procedure would seem even less appropriate than compelling the agencies to hammer out an agreement acceptable to all.